UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1995/SR.11
11 August 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-seventh session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 8 August 1995, at 10 a.m.

Chairman: Mr. MAXIM

later: Mr. HAKIM

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The meeting was called to order at 10.15 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1995/8 and 41; E/CN.4/Sub.2/1995/NGO/3, 11 and 15; E/CN.4/Sub.2/1995/55)

1. THE CHAIRMAN announced that the Sub-Commission's discussion on human rights and terrorism would be restricted to members only.

2. Mr. KHALIFA said that a human rights body like the Sub-Commission could not gloss lightly over one of the deadliest scourges of the present time, namely, terrorism, which reflected the lowest and meanest instincts of humans and had a long and wide reach that knew no barriers, no defence, no justice and no mercy. Material evidence had proved that terrorism was not a local or regional but a universal phenomenon. Neither distance nor national borders any longer provided the insulation that many people still hoped for. The globalization of communications, transportation, trade and finance had also globalized crime.

3. The right to oppose and criticize the Government was one of democracy's greatest strengths. But not even democracy was a sufficient guarantee against terrorism when words became bombs, bullets, bazookas and poison gas. Terrorism, in fact, was the most serious threat to the free exercise of self-government and democratic freedoms. It muffled the voice of the people.

4. Terrorism was by no means new. What had become different, besides the proliferation of the phenomenon, was the technological development of devices that could be used by terrorists with dreadful effect. Experts had affirmed that, if the bomb that had exploded under the World Trade Centre in New York had been wrapped in radioactive cobalt 60, it would not have been possible to approach within a mile of the site for the following 25 years. Sarin gas was relatively easy to make from commonly available materials and experts maintained that it would be possible to make it in the average high-school laboratory. In December 1994, the Czech Government had announced that it had arrested a band of nuclear smugglers who had been caught with three kilogrammes of highly enriched uranium, sufficient to construct, not a bomb but an "easily transportable and concealable" weapon to disperse lethal radioactivity. Very soon a new weapon could appear, namely, blinding laser weapons. Once a small version of that weapon was produced on a large scale, it could easily fall into the hands of terrorists and other criminals.

5. The lines between terrorism and guerrilla warfare were still blurred and needed demarcation. Leaving that aside, it was clear that terrorism was always motivated - unless it was mere gangsterism and organized crime for profit - by dogma, fanaticism, or despair amounting to suicide.

6. It might be that the root cause of the actions of the Aum sect in Japan had been intolerance with dissent in a highly controlled society that forced talented non-conformists into frustration. There might even be an element of religious imperative. In the Middle East it might be the challenge of

clashing claims of modernization and faith. In addition, there were large numbers of young people with no support at home who were looking for something to belong to and something to blame their problems on.

7. Recent events in Tokyo, Yokohama and Oklahoma and most recently in Paris had opened up a nightmare of total vulnerability to the highly industrialized countries. Who would have believed that there could be welfare terrorism?

8. Given the universal nature of terrorism, fighting it required international cooperation; General Assembly resolution 36/109 had emphasized that indispensable requirement. New measures were also being taken at the national level. Immediately after the Oklahoma bombing the United States Senate had adopted the Comprehensive Terrorism Protection Bill which would provide for a roving wiretap authority that would allow federal agents to eavesdrop widely; Congress had previously always been reluctant to approve such an expansion of surveillance. The bill would increase penalties for terrorist crimes and conspiracies involving explosives, broaden federal jurisdiction over terrorist-motivated crimes and create a federal death penalty for terrorist murders. A non-citizen could be brought before a special court, denied the right to know the evidence against him and deported without even learning the identity of his accuser. Japan's top public safety official had compared the Aum cult suspected in the Tokyo subway poisoning to a foreign enemy in a war, the equivalent of a "battle between a State and a State".

9. Above all, the international community should learn how to deal with the roots of intolerance and hate. In that connection he referred to the words of the Vatican representative who, in May 1995, had told the newspaper Corrierre de La Serra that "Israelis cannot continue to ask the Church to condemn anti-Semitism and then do nothing against the local anti-Christian sentiment". International terrorism could very well be the counterpart of global tyranny. The modern post-Gulf war world was dominated by force and violent intimidation and the disempowered were finding their refuge in terror. The marginalized who were left with no legitimate power could view terrorism as the only way to get action.

10. His comments should be regarded as an interpretation and not a justification of terrorism. Nobody in his right mind condoned terrorism. Those who used it for their own ends, harboured it and gave asylum to terrorists would soon realize that they would be blown up by their own weapons.

11. Mr. EIDE welcomed Mr. Khalifa's statement and considered that it might well mark the beginning of a study which the Sub-Commission had intended to pursue on the relationship between terrorism and human rights.

12. He agreed with most of what Mr. Khalifa had said but had some reservations. He could not accept Mr. Khalifa's hypothesis that the existence of some kind of global absolute Power could explain the occurrence of local violence. He felt rather that there was a lack of a global Power at the moment and that nobody really felt inclined to assume a police role in the world. The orientation seemed to be increasingly inward looking, including in the United States.

13. It would be essential for the Sub-Commission to systematize its thinking. For his part, he had immediately started to develop a four-fold table in which he had tried to distinguish between just and unjust purposes and between admissible and inadmissible means. The table would break down as follows. First there would be lawful or just purposes using lawful means; second would come lawful or just purposes using unlawful or unacceptable means. The third category would involve unlawful purposes employing permissible means while the fourth and worst category would be cases of unlawful purposes and unlawful means. Using such an approach it would be possible to identify the dimensions of the problem.

14. The scope of a given action was important as also was the issue of where the target should be sought, even assuming that a lawful purpose was being pursued. Even a national liberation struggle had to be limited in scope with regard to the means and place where actions could be implemented.

15. On the issue of means, considerable guidance was available in the draft minimum humanitarian standards that must be applied by all parties under all circumstances, currently before the Commission. Such standards must be applicable without any exception regardless of the purpose of the action.

16. The dividing line between national liberation movements, including struggles for self-determination, and purposes which were not acceptable was very difficult to draw, particularly bearing in mind the extended and dubious ways in which the word "self-determination" was currently being interpreted. That aspect was accordingly linked to an understanding of the concept of self-determination.

17. The issue was also linked with the overall human rights movement which, possibly for too long, had been concentrating on repressive measures adopted by Governments and had paid too little attention to the means that were being used by those who were opposing Governments. That was an area which the human rights movement had not yet been able to address. It should do so in the immediate future.

18. Mrs. PALLEY said that what she was about to say would be unpalatable to many in the room; it would also go against the attitude of the General Assembly which drew distinctions between violence and terrorism used in a colonial struggle for liberation and violence against established States.

19. She herself had lived in four States where terrorist actions had been taken against either colonialist administrators or against an established State where self-determination had already been properly exercised and there was accordingly no justification for violent rebellion and revival of the right to self-determination. She could not in practice see any difference in the outcome for the human rights of ordinary members of the public between cases where there had been violence against colonialist imperialist States and cases of violence against an established State. The people had suffered terribly in all cases, not least the populations from whose ethnic or cultural group the terrorists had come.

20. She also believed that violence in one place became a precedent for violence elsewhere. Each group was its own interpreter of self-determination and the group would interpret its own movement as a struggle against an

imperialist colonialist Power; alternatively it might say that, although self-determination had been exercised, there had been abuse of power and accordingly a lack of proper democracy and the issue of self-determination was revived. The argument regarding self-determination and how to interpret it would continue. She believed that terrible precedents had been set during the anti-colonialist struggle.

21. In her view, there was only one way in which the human rights of ordinary members of the public could be preserved and that was that all violence, whatever its source, must be condemned. The culture of violence and heroism in the exercise of violence must be displaced and the double standards ended.

22. It was certainly true that some groups would continue to seek their "liberation" through violence and some people would sympathize with them; those who used violence must pay the full penalty of the law and must not be treated as heroes, however legitimate the organization for which they worked might become because rebellious movements frequently succeeded in the end and became legitimized. The condemnation of violence should be perpetual and those who used it should be legally condemned and should never be forgiven or rehabilitated. That was the only way in which violence as a weapon could be eliminated. She did not believe in the "just war" doctrine. What was needed was the constant repudiation of violence.

23. The other side of the equation was constant international pressure on States which violated human rights and were consequently provoking resistance and violence. There was a deep philosophical gap in attitudes when it was claimed that some violence was good and some bad. In her view, all violence was bad and the issue was not between good and justified self-determination and bad unjustified rebellion and secession. All violence should be condemned.

24. Mr. ALI KHAN said that the dangerous phenomenon of terrorism, in its various forms and manifestations the world over, currently represented a major threat to democracy and human rights, as had been made clear in the Vienna Declaration and in the Sub-Commission at its forty-fifth and forty-sixth sessions and the Commission at its fiftieth and fifty-first sessions.

25. At its forty-sixth session the Sub-Commission had adopted resolution 1994/18 on the subject of human rights and terrorism and had called for the preparation of a working paper on the question of terrorism and human rights for consideration during the current session. He attached importance to having a working paper and to such follow-up action as the Sub-Commission might recommend.

26. Several dimensions of the issue of terrorism needed to be addressed seriously. First, it represented a danger to the State and society and to the enjoyment of human rights. The second area of concern was the use of cross-border terrorism against sovereignty and territorial integrity of nations or for the furtherance of political objectives. Third, there was the question of the linkages of terrorism with narcotics and extremism which could have a devastating impact on societies. Fourth, pluralistic and multicultural democracies with open societies based on the rule of law were particularly vulnerable to manipulations and disruption by groups or individuals described

by one member of the Sub-Commission as "ethnic entrepreneurs", spreading their message of hate and intolerance and employing terrorist means to promote their evil designs. It was deeply disconcerting to think what such a creed of violence, intimidation, extortion and fear could imply for coming generations and entire societies forced to live in fear as well as for the structures and response mechanisms of the States themselves.

27. In recent years terrorism has increasingly manifested itself as a form of expression for violence flowing from divisive, ethnic and sub-ethnic chauvinism which was seeking to be legitimized under the guise of calls for self-determination. Once the use of violence and terrorism had become the means to resolve disputes and was perceived as a legitimate expression of any form of discontent, it was only a step to encouraging the procurement of the means of violence. That phenomenon had already led to the proliferation of arms bazaars and the development of a connection between narcotics and arms smuggling known as narco-terrorism. In several regions of the world the number of heroin users and addicts had grown exponentially with the growth of terrorism. If that phenomenon was not checked, several societies in the world would progressively become more threatened.

28. Terrorism sought to destroy the very structure of the institutions of democracy which alone provided the surest basis and foundation for civil society and the protection of human rights. Terrorists methods included attacks on a massive scale on politicians, the judiciary, the press and the administrative machinery of Governments which were the fundamental institutions of good governance and the pillars of democracy. If those institutions were destroyed, the rule of the gun would replace the rule of law; propaganda and disinformation on which terrorism thrived would replace legitimate expression by the people through representative institutions and the media; and mechanisms for the redress of grievances would become dependent on the whims of the purveyors of intolerance and authority.

29. Terrorism had also become the vehicle for the blatant spread of social, ethnic and religious cleavages in countries and societies. The result was very often large-scale displacement of people through ethnic cleansing even within their own countries.

30. Terrorism currently constituted the principal threat to civil society and to the rule of law and constituted a negation of all human rights, including the basic right to life itself. The Sub-Commission should send a clear message to the Member States of the United Nations to respect their obligations under the Charter and to refrain from encouraging, promoting or sponsoring terrorism. The Sub-Commission must continue to play its important role in bringing the sustained pressure of world public opinion against terrorism and its perpetrators, particularly in the light of its own resolution adopted in 1994 which had recognized terrorism as a violation of human rights. The Sub-Commission must suggest ways to combat that threat through effective and concerted international cooperation.

31. Mr. JOINET, agreeing with Mrs. Palley that nothing justified blind violence, which under any circumstances violated the Geneva Conventions, said that the difficulty lay in identifying the point at which an act should be qualified as terrorism. Certainly the examples were numerous of persons

formerly described as terrorists who subsequently occupied respected positions of power, and indeed the same persons often acted very differently when it came to exercising power than they had in securing it.

32. There were not enough guidelines to go on to know how to fight terrorism while at the same time respecting all legal safeguards. The two were difficult to balance.

33. The Commission's significant call for a United Nations mobilization against terrorism in resolution 1994/46 would be recalled, and all rapporteurs, himself included as Chairman/Rapporteur of the Working Group on Arbitrary Detention, must assemble the information needed for a proper analysis of the issue.

34. Mr. EL-HAJJE, noting that terrorism was a daily occurrence in all parts of the world because of the ease of movement across borders and the ease with which terrorist weapons could be fabricated or obtained, said that he saw no practical way of preventing it. Among the causes of terrorism were the decline of moral values, the incitement to hatred by bigoted groups, and the inability of different social groups to communicate meaningfully with each other.

35. In such a dangerous climate, he saw one possible way of dealing with terrorism and still staying within the bounds of human rights: if all States ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, it would give a moral lesson to terrorists by reaffirming the sacredness of human life and the individual person. The Sub-Commission, by urging ratification, would hold to its mandate, the defence of the human being.

36. Mr. KHALIFA thanked the various members of the Committee who had commented on the very preliminary statement he had made. They had wisely raised pertinent issues in a wider perspective than his own and had opened new doors that needed further exploration and deeper consideration. He himself had not yet settled in his own mind on a firm attitude towards terrorism and was consequently not against anything that had been said. His intention had not been to make a definitive statement but to invite a wider debate, which would necessarily involve philosophically contrasting positions that would not be reconciled. In any case, the differentiation must be drawn between terrorism and simple violence, and State violence and terrorism ensuing from it must be scrutinized.

37. He was not ready to draft any resolution on the question, for the time was not yet ripe. Terrorism must, however, be given a prominent place under item 6, in addition to other items, because it was a gross violation. Since Mr. Ramadhane had been unable to prepare a working paper on the subject, the task could perhaps be assigned to another member, for consideration at the next session.

38. Mrs. FORERO UCROS, agreeing that the Sub-Commission should keep the issue on its agenda and that a working paper on terrorism should be prepared, thought that the task might perhaps be assigned to Mr. Khalifa himself, because he had already offered such an outstanding analysis of the variables and causes of terrorism.

39. Mrs. WARZAZI observed that the subject of terrorism had to be approached with caution and detachment before it could be properly defined. A working paper serving as a basis for discussion would have been very useful, and she endorsed the suggestion that one should be prepared in good time for consideration at the next session.

40. None could remain aloof or indifferent to such a dramatic, worldwide phenomenon. She was grateful to Mr. Khalifa for having prevented the Sub-Commission from closing the debate without addressing it, especially since the Commission had asked all United Nations bodies to reflect on the question.

41. It was already apparent that there were differing interpretations within the Sub-Commission, and the Commission must eventually arrive at a consensus view. That would be the Sub-Commission's task: to prune away and to discuss, so that opinions could coalesce and the Commission would be helped to unify the thinking on the subject.

42. The CHAIRMAN, agreeing that the important issue of terrorism should be kept on the agenda, said that the Sub-Commission had concluded its deliberations on agenda item 6.

PROTECTION OF MINORITIES (agenda item 17) (continued) (E/CN.4/Sub.2/1995/33 and Add.1-2, 34 and 40; E/CN.4/Sub.2/1995/NGO/13, 14 and 15)

FREEDOM OF MOVEMENT (agenda item 18) (continued)

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) POPULATION DISPLACEMENTS (E/CN.4/Sub.2/1995/35; E/CN.4/Sub.2/1995/NGO/10 and 16)

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO RACISM, XENOPHOBIA, MINORITIES AND MIGRANT WORKERS (agenda item 20) (continued) (E/CN.4/Sub.2/1994/36 and Corr.1)

43. Mrs. DAES, speaking under agenda item 17 and referring to the working paper by Mr. Eide on enclaved groups (E/CN.4/Sub.2/1995/34), said that, although she admired Mr. Eide's work, she believed that particular working paper suffered from vagueness, lack of documentation and a deficiency of reliable sources and information. Some of the examples used were incomplete or contained false information.

44. Deported peoples, for instance (sect. 3 of the working paper), did not properly belong among enclaved groups: that particularly vulnerable group comprised a separate category of victims of human rights abuses, namely, forcibly removed people. Also, in her opinion, the cases of Cyprus and of Bosnia and Herzegovina, as treated in section 5 of the working paper, were dissimilar. The situation in the latter had not yet stabilized and the outcome of the ongoing armed conflict could not yet be foreseen; while in the case of Cyprus there had since 1974 been a clear group of enclaved people in the Turkish-occupied part of the island.

45. The most serious case dealt with was the situation in the Karpas region in the north of Cyprus (para. 19 of the working paper), although the drama of that enclaved group and the systematic and gross violations of their human rights had been described very laconically. The Secretary-General, in his latest report on the situation of Greek Cypriots located in the northern part of Cyprus, had stated that of the 20,000 Greek Cypriots known to be there in September 1974, only 519 remained by March 1995 and all but 2 were in the Karpas region. A 1975 agreement between the two communities on the island, known as the Vienna Three Agreement, had sought to address the situation of Turkish Cypriots living in the south and Greek Cypriots and others living in the north. Under that Agreement, the Greek Cypriots in the north were free to stay and would be given every assistance in leading a normal life, including educational and religious facilities, medical care by their own doctors and freedom of movement in the north. That key clause, however, had never been implemented in the 20 years since. On the contrary, the Turkish Cypriot authorities had imposed conditions and restrictions prompting many of those Greek Cypriots to relocate permanently in the south, so that their villages in the north had been progressively taken over by settlers from Turkey. Extensive restrictions had also been placed on the United Nations Force in Cyprus (UNFICYP) in the northern part of the island, despite Security Council calls for cooperation.

46. Furthermore, the assertion (para. 20 of the working paper) that between 1964 and 1974 the Turkish Cypriots had been subjected to policies that drove them into enclaves which were then put under an economic blockade was categorically unfounded. A solution based on geographical separation had always been the Turkish Cypriot policy, as confirmed in a 1965 report by the then United Nations mediator in Cyprus (S/6253 and Corr.1, para. 97). To achieve their aim, Turkish Cypriots had always made much of the argument that partition of the island was inevitable. Other irrelevant political considerations and inaccuracies were to be found in that same paragraph of the working paper.

47. With regard to section 9 on enclaved groups within sovereign States with control over the territory, an enclaved group of ethnic Turks, alleged by a single individual to be living in Greece, simply did not exist; consequently paragraphs 21 and 22 of the working paper should be deleted. In connection with paragraph 23, it should be noted that within the surveillance zone close to the Greek frontier with Bulgaria approximately 15,000 Greek Muslims were indeed living and had absolute freedom of movement within and outside the zone as well as freedom to engage in farming, forestry and manufacturing activities.

48. She had carefully studied Mr. Eide's working definition of enclaved groups in paragraphs 24 and following. Considering that the Sub-Commission - and Mr. Eide himself - had struggled unsuccessfully to elaborate acceptable definitions of the terms "minorities" and "indigenous" for many decades, a working paper on enclaved groups should first clarify the purpose or the usefulness of introducing that new concept into human rights law before trying to arrive at a definition. The aim should be to draw attention to certain serious situations where enclaved persons were especially vulnerable and not adequately protected by existing human rights instruments. It was also

important to clarify whether or not a new category of vulnerable group with specific collective or individual rights was being proposed. She agreed with Mr. Hatano's position that a clear purpose must precede a definition, although she did not support his suggestion that enclaved persons or groups should be referred to as "isolated peoples".

49. Members of the Sub-Commission could easily give Mr. Eide a much longer list of enclaved groups around the world which suffered from severe discrimination and inhuman treatment. They could also provide reliable information on a number of situations throughout the world, which would help to define at least the meaning of the concept of enclaved groups and propose concrete measures within the framework of international human rights law for their survival. Accordingly, she considered the preparatory work and analysis referred to in paragraphs 24 to 29 of the working paper incomplete and the proposed definition premature. Much more preparatory work, analysis and evaluation of a number of situations needed to be done. The topic was clearly relevant to international human rights and humanitarian law and was a very important and urgent one and the Sub-Commission should give Mr. Eide the opportunity to continue his work and to prepare a preliminary report.

50. Mr. Hakim took the Chair.

51. Mr. BOSSUYT, speaking on agenda item 19, said that for more than 20 years, in the wake of the oil crisis and widespread unemployment, western European countries had adopted more restrictive immigration policies, although as parties to the United Nations Convention relating to the Status of Refugees, they still had an obligation not to expel or return refugees to their countries of origin when they were in reasonable danger of persecution there. That stricture against refoulement did not apply to persons emigrating for economic reasons, even exceptionally serious ones, for the United Nations Convention explicitly covered only persons denied national protection because of their political or religious convictions or ethnic origins. Such political refugees, whose lives, liberty or physical integrity were in serious, well-founded danger in their own countries must be given asylum by the country of refuge unless a third country was prepared to admit them.

52. The distinction between types of refugees on the basis of the United Nations Convention was valid for several reasons. First, States parties had assumed the obligation of non-refoulement only in relation to refugees within the meaning of the Convention; secondly, no criteria had ever been adopted for granting asylum to economic refugees; thirdly, the cause of the poverty or economic hardship that had impelled such persons to leave their own countries - namely the North/South and West/East economic imbalance - was not addressed by granting them asylum in the industrialized countries, since those who made their way there were not necessarily the most needy, and the cost of granting them asylum sometimes exceeded the total development assistance budget of the host country, which money would be more judiciously spent in the developing countries themselves.

53. While genuine refugees within the meaning of the Geneva Convention should be welcomed, people entering a foreign country without prior authorization had a duty to comply with orders to leave.

54. The extent of such "hijacking" of the asylum procedure had grown to enormous proportions in recent years. In some countries, between 80 and 99 per cent of all asylum applications were made by foreign nationals who did not meet the criteria of the Geneva Convention.

55. Asylum procedures and the reception of asylum seekers were expensive. Governments, increasingly aware of the extent to which those procedures were being abused, were inclined to take measures which hit both genuine refugees and those who abused the system. It was precisely to ensure better protection for the refugees themselves that States needed to cooperate to limit abuses.

56. Host countries sometimes faced great difficulties in repatriating people who did not meet the criteria of the Geneva Convention. In such cases, neither the person concerned nor his national Government were inclined to cooperate, despite the obligation of any State to take back any of its own citizens who had illegally entered another country. Many of the foreign nationals in question had, or claimed to have, no identity card. In some such cases, the national Government obstructed the process of obtaining identity documents by claiming that lengthy investigations had to be undertaken to verify the identity and nationality of the person concerned.

57. Some donor countries also seemed to think that the illegal presence in industrialized countries of a substantial number of their own workers was in their interests, because of the foreign currency which those workers would send from time to time to their own families. Such an attitude was misplaced on several counts. It was not conducive to the development of friendly relations between the Governments concerned. It exposed illegal workers to the worst forms of exploitation, and stimulated xenophobia and racism in the host country. It in no way helped the cause of sound relations between peoples, and sometimes resulted in an unduly restrictive visa policy to the detriment of those making applications in good faith.

58. For all those reasons, there was a need for greater cooperation between all Governments concerned. While greater freedom of movement was unquestionably desirable, it had to be realized within a framework of law. No Government could believe that it could benefit in the long term from a policy of turning a blind eye to abuses of the law. Only through such cooperation would greater flexibility be achieved in the international exchange of people. Much still remained to be done in that area, both in the interests of human rights and that of the Governments concerned.

59. Mrs. MBONU, speaking on agenda item 18 (b), said that the question of population displacements was not a new topic for the Sub-Commission. She recalled that she had submitted a working paper on the question (E/CN.4/Sub.2/1991/47) at the forty-third session and had attempted to answer the many detailed questions which had been raised on that occasion.

60. Population transfers, whenever they occurred, connoted the implantation of settlers in land not originally their own and almost inevitably entailed serious violations of the human rights both of the original inhabitants and of the settlers themselves. The migrants were often moved without their free and informed consent or that of the people into whose territory they were being moved. The phenomenon was on the increase and was referred to by various

terms, including population transfer, population displacement, resettlement, relocation, transmigration or even colonization. It was important to draw a clear distinction between "spontaneous" migration and "induced" or "sponsored" population movements. Governments often encouraged resettlement with logistical support and by recruiting and transporting settlers, by clearing land and building infrastructures. They also encouraged migration by inaction, for example, by failing to deal with problems of overcrowding, land shortage or unemployment. It was the "induced" population movement which concerned the Sub-Commission. Resulting as it did in involuntary resettlement, it was a violation of article 12, paragraph 1, of the International Covenant on Civil and Political Rights, according to which anyone lawfully within the territory of a State should enjoy freedom of movement and the freedom to choose their residence, and of article 8, paragraph 3, which prohibited forced labour. Such an induced population transfer had wide-ranging repercussions for human rights. It often led to the impoverishment both of the host population and of the migrants or settlers. It usually meant that the migrants themselves were denied the opportunity to participate in public affairs, in contravention of article 25, paragraph 1, of the International Covenant, and was often unfairly targeted at specific indigenous groups or minorities, disrupting the normal cultural and religious lives of such communities in violation of article 27.

61. Turning to the example of Cyprus, she asked how the demographic balance of the island could have been changed so radically over a period of more than two decades while the United Nations appeared powerless to do anything. There were numerous other similar examples, including Bosnia and Herzegovina and Liberia. It was already a well-established fact that such a population transfer often impoverished the migrants and the host population and led to social destabilization. If those situation could not be prevented altogether, the international community had an obligation to monitor them closely for human rights violations and to refuse to recognize the resulting demographic changes. Such recognition, as the example of Bosnia and Herzegovina had shown, was tantamount to legitimizing aggression and policies of ethnic cleansing.

62. Mrs. PALLEY commended the work done by Mrs. Mbonu on the subject of population displacements, which had provided a very valuable basis for the subsequent study done by Mr. Al-Khasawneh.

63. With regard to the working paper on the concept and issues relating to "enclaved groups" (E/CN.4/Sub.2/1995/34) prepared by Mr. Eide, some doubt existed in her mind as to the accuracy and completeness of all the evidence shown in the report which, as was normal practice, had been produced with the help of research assistants.

64. With regard to the usefulness of the concept of "enclaved persons", she felt obliged, for once, to disagree with Mrs. Daes. In her opinion, the proper treatment of all persons who might come under the definition "enclaved" was adequately covered by existing human rights law. She noted that Mrs. Daes, in her comments on the working paper, had referred to the Secretary-General's most recent report. There was another United Nations report by the Chief Humanitarian Officer attached to the United Nations Peace-keeping Force in Cyprus on the plight of the inhabitants of the Karpas region. She had sent Mr. Eide a copy, but had been disappointed to find no

reference to that report in the working paper. From her own studies of the community in question, she knew that the people in that region, more than 60 per cent of whom were over 60 years of age, were living isolated in six villages and subjected to severe restrictions on their movements and unable to receive visits from their families. Given that the matter was already the subject of a fourth case, based solely on human rights violations currently before the European Commission of Human Rights, she felt that it was inappropriate for the Sub-Commission to express an opinion. In general, the concept of "enclaved persons" did not appear to be a particularly useful one, since it brought nothing new into the discussion which could not be covered by other categories.

65. Mr. BOUTKEVITCH noted that agenda items 17, 18 and 20 each involved a complex set of interrelated issues and obliged the Sub-Commission to consider various human rights issues and issues of implementation of international legal standards in many different States with different legal systems. Item 20, for example, relating to a comprehensive examination of thematic issues relating to racism, xenophobia, minorities and migrant workers, required a special approach and merited time for special consideration in its own right, given that xenophobia in some Western countries had reached epidemic proportions.

66. In view of the limited time available, he would confine himself during the present meeting to item 18. The working paper by Mr. Eide on the concept and issues relating to "enclaved groups" (E/CN.4/Sub.2/1995/34) was distinguished by the rigorous standards and deep commitment to the protection of the rights of national minorities for which Mr. Eide was well known and indeed appeared to contain an entire programme of work not only for the pre-sessional working group of which he was a member but for the Sub-Commission as a whole. Its conclusions were clear, concise, well thought out and convincingly argued. However, there were certain questions which he would wish to raise on a number of points.

67. Firstly, with regard to the methodology used in the working paper, he wondered why the term "enclaved groups" had been chosen and what it actually meant. According to paragraph 2 of the document, the notion of "enclaved groups" had not yet been formally defined under international law. In paragraph 3, it was stated that international enclaves were known under international law and were isolated parts of a State's territory entirely surrounded by the territory of another State, and thus had no surface communications with the territory of the State to which it belonged other than through the surrounding State. While that offered the basis of a definition of "enclaved group", some clarification was needed to reflect the fact that an enclaved territory might in theory be made up of territory belonging to more than one State, and that there was no existing enclave which had absolutely no land connection with the State of which it was a part. Furthermore, the term "main State" used in paragraph 3 was in his view inappropriate, implying as it did a distinction between the enclave and the rest of the State to which it belonged.

68. He noted also that the working paper, rightly, drew a distinction between "enclaved groups" and "territorial enclaves", but consistently adopted an approach implicitly based on the territorial concept. While it was difficult

when dealing with novel concepts to avoid discussing them in terms of classical legal concepts, care was needed to formulate strict definitions to avoid arriving at false conclusions. One such conclusion in his view was the statement that international enclaves did not pose any specific human rights problems, which failed to take into account the problems faced by people obliged to obtain transit visas or the jurisdictional disputes which might arise.

69. Another problem might arise from the working definition proposed in paragraph 2 on the basis of human rights law including provisions relating to minority protection. Since there was no universally accepted definition of "national minority", the use of that concept in order to define another one might lead to difficulties. The definition also failed to take account of the notion of "indigenous peoples", for which, it should be said in passing, there was no clear definition, either.

70. The problem of precise definitions to which he had referred might well complicate the Sub-Commission's work. At a working group meeting during the present session, one representative of a non-governmental organization had spoken on behalf of his own indigenous people, while taking the floor on another occasion on behalf of another NGO as a representative of his national minority. One could envisage a situation where representatives were required to work simultaneously in two different guises, increasing their workload and complicating the Sub-Commission's task. The representative's country illustrated another important aspect often neglected in discussions concerning the rights of national minorities and indigenous peoples, namely, the fact that rights could not be discussed in isolation from obligations, which were a vital aspect of any legal relations. Once rights had been legally established, as by and large they had been in the country in question, then all the groups concerned, as well as the Government, had a duty actively to implement the laws which protected them. He also wished to appeal to NGOs to make every effort, especially in countries where democracy was at a developing stage, to help the various representatives of minorities or indigenous groups to come to grips with the relevant international human rights instruments and to make full use of all domestic remedies before applying to the Sub-Commission, which should ideally concern itself only with situations where such remedies were ineffective or non-existent.

71. Turning to the second section in the working paper, concerning the distinction between enclaved groups and autonomies, he suggested that some further study was needed in that area. Firstly, despite the author's caution regarding the use of territorial criteria, those criteria appeared to be implicit throughout the section and the examples given related to territorial criteria and the administration of government, rather than to the specific features of the enclaved groups. Secondly, there were different types of autonomy, some based on the national concept, others entirely on territorial criteria, and some further elucidation of the differences was needed.

72. There had, of course, been flagrant violations of the human rights of enclaved groups in the Soviet Union after the Second World War, but some of the most serious situations had existed before then. The aim had been not so much to create enclaved groups as to destroy peoples by dispersing them

throughout the Soviet Union, far from their historical homeland. In many cases only economic difficulties had prevented the destruction of enclaved groups. The return of the Crimean Tatars to their historical homeland was being financed only by Ukraine; other States had failed to help because the issues involved were not important to them. Problems of citizenship, pensions and so forth inevitably arose. It was doubtful whether, even now, the works of Marx and Lenin would be burnt, although works of national literature had been destroyed. The maltreatment of deported peoples had been acknowledged during the Gorbachev period, but no apology had been made at that time.

73. If coercion or force was necessarily involved in the creation of an enclaved group, the scope of the study would perhaps be limited, since certain situations involving enclaved groups that had come into being without the use of force would be excluded. Moreover, in practice it would be hard to prove that an enclaved group had been prevented from developing its culture; the existence of a weakened culture might not be sufficient evidence. The definition of an enclaved group was not so much territorial but legal, an enclaved group being a specific group of persons to whom a special regime applied. Enclaved groups could arise not only as the result of an illegal action by the State; they could come into being, for example, as the result of a failure of the State to act, and deported peoples could become enclaved groups even if the State did nothing.

74. All in all, thanks were due to Mr. Eide for his very concise working paper, which had substantial content and was full of thought-provoking ideas. The Sub-Commission needed more time in which to work on it.

75. Mr. EIDE, responding to the comments made by members, expressed his satisfaction that his working paper had been given so much attention. It had been his intention to deal not with specific situations involving enclaved groups but with the conceptual framework. Mrs. Daes and Mrs. Palley had provided some valuable insights which would be of benefit to him, and the issues raised by Mr. Boutkevitch could well be explored. He would be able to check the information provided by Mr. Sadik Ahmet, now deceased, if the Government of Greece invited him to visit the region concerned. Deported peoples did not really fall within his suggested definition of enclaved groups, although they had many problems in common with them. The works of Marx and Lenin and of all other writers had been burnt in an attempt to cause the people concerned to forget that it had its own written language - a matter that had been comprehensively studied. The Turkish enclaves that had existed in Cyprus from 1964 to 1974 had been partly the product of Turkish policy. He would be able to provide a footnote to every sentence in paragraph 20 if requested. The situation in the Karpas region was very serious. In his view, Bosnia and Herzegovina did not fall into the same category as Cyprus, the present division of which he did not consider to be final, although the situation in the Karpas Peninsula might well be so. He reiterated the views on the enclavement of groups set forth in paragraph 29 of the working paper. He was prepared to do more work on the subject, but the purpose should be made clearer. Nevertheless, he had misgivings regarding the value of having a definition of enclaved groups, since so many nuances had to be taken into account.

Statements equivalent to a right of reply

76. Mr. WADA (Observer for Japan), replying to the statement made by the observer for Liberation concerning "handicapped" Korean school graduates, said that the allegation was not based on a correct understanding of the situation, since a wide choice of education was guaranteed by the Japanese Government to every foreign student. In the first place all persons were admitted to a regular school regardless of their nationality. The curricula of regular schools had to comply with the official guidelines for each stage of formal education, from elementary school to university, and be consistent with the School Education Act. Regular high-school graduates were qualified to enter universities, regardless of their nationality.

77. It was, of course, reasonable that some foreign students should wish to attend schools that taught their national history, culture and mother tongue. If such schools were established in compliance with the official guidelines, they were recognized as regular schools. Nearly 95,000 students of foreign nationalities attended such regular schools, out of a total of nearly 125,000 of school age.

78. Some foreign residents wished to have their own kind of education. That option was also open. For example, United States or Canadian residents had established their schools, just as Korean residents had done. The curricula at those schools, which were not established as regular Japanese schools, were not bound by the official guidelines, with the result that their graduates were not qualified to enter Japanese universities. There was no discrimination against any particular nationality in that regard. Such schools enjoyed appropriate legal protection under the School Education Act.

79. Mr. QUAYES (Observer for Bangladesh), responding to the statement made by the observer for Liberation under agenda item 18, noted that it had welcomed the study undertaken by the Sub-Commission to consider the human rights dimension of population transfers. The Government of Bangladesh also welcomed it, but failed to see any linkage with article 94 of the Fourth Geneva Convention. There was, in the Convention, an article 49 on deportation, transfers, evacuation and so forth, but that related to people of an occupied territory vis-à-vis an occupying Power. Since the end of Bangladesh's war of liberation, there had clearly been no occupying Power or any territory that had been identified as occupied. There had been no deportation or forcible transfer of any group or individual from any part of Bangladesh. On the contrary, Bangladesh had been playing host to refugees while endeavouring to arrange for their voluntary repatriation. Bangladesh had also been pursuing the completion of the repatriation of Bangladeshi tribal refugees from India.

80. The observer for Liberation had spoken of population transfers in the context of the Chittagong Hill Tracts, using curious expressions like "legitimizing colonial rule" and "disguised invasion". What invasion was being referred to, and what actors could be imagined in an "internal" invasion scenario within a unitary State? If he meant invasion to refer to the natural movement of populations within national boundaries, then it ought to be rather the residents of the capital city of Dhaka crying "invasion", since its population had grown from 300,000 to over 700,000 over the past two decades. He accepted the notion of natural migrational populations as understandable.

He identified only planned population transfer policy as insidious. Why then such a tirade against Bangladesh, where there was no State policy of planned population transfer? There had been the settlement of some landless persons on government land in the Hill districts between 1979 and 1983, but it had long been discontinued.

81. The Bangladeshi delegation's statement on the Naniarchar incident in the Working Group on Indigenous Populations had been clear and unambiguous and was available for reference at any time. It had stated the actions initiated by the Government on the basis of the report of the Commission of Inquiry, whose recommendations had been accepted by the Government. Thus departmental proceedings as well as police cases were being pursued. It was in the interest of justice that administrative and legal procedures were being completed before the punishment of individuals was sought or anyone was branded as guilty or otherwise, since the due process of law could not be sacrificed to the convenience of politically motivated posturing. The Government of Bangladesh had also provided the Sub-Commission with the particulars of the cases that had been lodged, along with the specific sections of the Penal Code under which they had been brought.

82. He wished to remind Liberation that communications under the 1503 procedure were confidential and that to call upon the Sub-Commission to make public any communication or reply thereto would be to request it to subvert its own rules of procedure and mandate.

83. The Government of Bangladesh had nothing to hide with regard to the Chittagong Hill Tracts. On 2 and 3 June 1995, the ambassadors of seven European Union countries, Iran and Pakistan had visited the three Hill districts. They had expressed their satisfaction at the overall development activities in the Hill districts and their appreciation of the Government's desire to bring back all the tribal refugees from India. Both the French and Italian ambassadors had spoken positively of the measures taken by the Government, which had invited the High Commissioner for Human Rights to visit Bangladesh.

84. Mr. MUÑOZ-LEDO (Observer for Mexico), responding to the comments made by the observer for Pax Romana regarding the situation of refugees in Mexico, said that since 1980 Mexico, with the collaboration of UNHCR, had received approximately 50,000 refugees, mostly from Guatemala. Some 48 per cent of refugee children had been born in Mexico. As could be ascertained from UNHCR documents, the total number of refugees had fallen as a result of voluntary repatriations, not of pressure by the Government. Some refugees could not return home because of legal problems in their country of origin, especially problems relating to their status and the ownership of land. The World Food Programme had not suspended its contribution for 1996; it would distribute only the emergency amount, and the Mexican Government and UNHCR were looking for other sources. Humanitarian aid had reached the refugees in Chiapas, and UNHCR had reported, in a document dated 19 July 1995, that no adverse incidents had been reported.

The meeting rose at 1.05 p.m.